

## **Indiana Code Citations regarding Antidegradation**

**The following statutory language includes specific requirements that apply to antidegradation:**

### **IC 13-18-3-2**

#### **Designation of outstanding state resource waters; rules and recommendations; NPDES general permits and antidegradation review; classification of waters**

Sec. 2. (k) For a water body designated as an outstanding state resource water, the board shall provide by rule procedures that will:

(1) prevent degradation; and

(2) allow for increases and additions in pollutant loadings from an existing or new discharge if:

(A) there will be an overall improvement in water quality for the outstanding state resource water as described in this section; and

(B) the applicable requirements of 327 IAC 2-1-2(1) and 327 IAC 2-1-2(2) and 327 IAC 2-1.5-4(a) and 327 IAC 2-1.5-4(b) are met.

(l) The procedures provided by rule under subsection (k) must include the following:

(1) A definition of significant lowering of water quality that includes a de minimis quantity of additional pollutant load:

(A) for which a new or increased permit limit is required; and

(B) below which antidegradation implementation procedures do not apply.

(2) Provisions allowing the permittee to choose application of one (1) of the following for each activity undertaken by the permittee that will result in a significant lowering of water quality in the outstanding state resource water:

(A) Implementation of a water quality project in the watershed of the outstanding state resource water that will result in an overall improvement of the water quality of the outstanding state resource water.

(B) Payment of a fee, not to exceed five hundred thousand dollars (\$500,000), based on the type and quantity of increased pollutant loadings, to the department for deposit in the outstanding state resource water improvement fund established under section 14 of this chapter for use as permitted under that section.

(3) Criteria for the submission and timely approval of projects described in subdivision (2)(A).

(4) A process for public input in the approval process.

(5) Use of water quality data that is less than seven (7) years old and specific to the outstanding state resource water.

(6) Criteria for using the watershed improvement fees to fund projects in the watershed that result in improvement in water quality in the outstanding state resource water.

(p) This subsection applies to all surface waters of the state. The department shall complete an antidegradation review of the rules of the board that authorize NPDES general permits. The board may modify those rules for purposes of antidegradation compliance. After an antidegradation review of a rule is conducted under this subsection, activities covered by an NPDES general permit authorized by that rule are not required to

undergo an additional antidegradation review. An NPDES general permit may not be used to authorize a discharge into an outstanding national resource water or an outstanding state resource water, except that a short term, temporary storm water discharge to an outstanding national resource water or to an outstanding state resource water may be permitted under an NPDES general permit if the commissioner determines that the discharge will not significantly lower the water quality downstream of the discharge.

(q) Subsection (r) applies to an application for:

(1) an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4); or

(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant lowering of water quality as defined in subsection (l)(1).

(r) For purposes of an antidegradation review with respect to an application referred to in subsection (q), the applicant shall demonstrate at the time the application is submitted to the department, and the commissioner shall review:

(1) an analysis of alternatives to the proposed discharge; and

(2) subject to subsection (s), social or economic factors indicating the importance of the proposed discharge if alternatives to the proposed discharge are not practicable.

(s) Subject to subsection (t), the commissioner shall consider the following factors in determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures:

(1) Creation, expansion, or maintenance of employment.

(2) The unemployment rate.

(3) The median household income.

(4) The number of households below the poverty level.

(5) Community housing needs.

(6) Change in population.

(7) The impact on the community tax base.

(8) Provision of fire departments, schools, infrastructure, and other necessary public services.

(9) Correction of a public health, safety, or environmental problem.

(10) Production of goods and services that protect, enhance, or improve the overall quality of life and related research and development.

(11) The impact on the quality of life for residents in the area.

(12) The impact on the fishing, recreation, and tourism industries.

(13) The impact on threatened and endangered species.

(14) The impact on economic competitiveness.

(15) Demonstration by the permit applicant that the factors identified and reviewed under subdivisions (1) through (14) are necessary to accommodate important social or economic development despite the proposed significant lowering of water quality.

(16) Inclusion by the applicant of additional factors that may enhance the social or economic importance associated with the proposed discharge, such as an approval that:

(A) recognizes social or economic importance; and

(B) is given to the applicant by:

- (i) a legislative body; or
  - (ii) other government officials.
- (17) Any other action or recommendation relevant to the antidegradation demonstration made by a:
  - (A) state;
  - (B) county;
  - (C) township; or
  - (D) municipality;
 potentially affected by the proposed discharge.
- (18) Any other action or recommendation relevant to the antidegradation demonstration received during the public participation process.
- (19) Any other factors that the commissioner:
  - (A) finds relevant; or
  - (B) is required to consider under the Clean Water Act.
- (t) In determining whether a proposed discharge is necessary to accommodate important economic or social development in the area in which the waters are located under antidegradation standards and implementation procedures, the commissioner:
  - (1) must give substantial weight to any applicable determinations by governmental entities; and
  - (2) may rely on consideration of any one (1) or a combination of the factors listed in subsection (s).
- (u) Each exceptional use water (as defined in IC 13-11-2-72.5, before its repeal) designated by the board before June 1, 2009, becomes an outstanding state resource water on June 1, 2009, by operation of law.
- (v) Beginning June 1, 2009, all waters of the state are classified in the following categories:
  - (1) Outstanding national resource waters.
  - (2) Outstanding state resource waters.
  - (3) Waters of the state as described in 327 IAC 2-1-2(1), as in effect on January 1, 2009.
  - (4) High quality waters as described in 327 IAC 2-1-2(2), as in effect on January 1, 2009.
  - (5) Waters of the state as described in 327 IAC 2-1.5-4(a), as in effect on January 1, 2009.
  - (6) High quality waters as described in 327 IAC 2-1.5-4(b), as in effect on January 1, 2009.

### **IC 13-18-3-2.1**

#### **Deadline for department to complete antidegradation review in certain circumstances; extension**

Sec. 2.1. (a) If a discharge results from an activity for which:

- (1) an NPDES permit subject to IC 13-15-4-1(a)(2)(B), IC 13-15-4-1(a)(3)(B), or IC 13-15-4-1(a)(4); or

(2) a modification or renewal of a permit referred to in one (1) of the sections referred to in subdivision (1) that proposes new or increased discharge that would result in a significant lowering of water quality as defined in IC 13-18-3-2(1)(1); is sought, the deadline for the department to complete the antidegradation review under 40 CFR 131.12 and 40 CFR Part 132, Appendix E with respect to the discharge is the deadline for the commissioner to approve or deny the NPDES permit application under IC 13-15-4-1.

(b) The commissioner may extend for cause for not more than ninety (90) days the deadline under subsection (a) for the department to complete the antidegradation review.

#### **IC 13-18-3-14**

##### **Outstanding state resource water improvement fund; administration; annual report by commissioner to environmental quality service council**

Sec. 14. (a) The outstanding state resource water improvement fund is established. All money collected under section 2 of this chapter and any money accruing to the fund are continuously appropriated to the fund to carry out the purposes of section 2 of this chapter. Money in the fund at the end of a state fiscal year does not revert to the state general fund, unless the outstanding state resource water improvement fund is abolished.

(b) The outstanding state resource water improvement fund shall be administered as follows:

(1) The fund may be used by the department of environmental management to fund projects that will lead to overall improvement to the water quality of the affected outstanding state resource water.

(2) The treasurer of state may invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested.

(3) Any interest received accrues to the fund.

(4) The expenses of administering the fund shall be paid from the fund.

(c) The commissioner shall annually report to the environmental quality service council:

(1) plans for the use and implementation of the outstanding state resource water improvement fund; and

(2) the balance in the fund.

*As added by P.L.140-2000, SEC.21. Amended by P.L.78-2009, SEC.17.*

##### **The following statutory definitions are used in the Antidegradation Standards and Implementation Procedures rule (327-IAC 2-1.3):**

#### **IC 13-11-2-24**

##### **"CERCLA"**

Sec. 24. "CERCLA", for purposes of IC 13-25-4, refers to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 et seq.), as in effect on January 1, 1987.

**IC 13-11-2-29****"Clean Water Act"**

Sec. 29. "Clean Water Act", for purposes of this chapter, IC 13-18-13, IC 13-18-22, and IC 13-18-23, refers to:

- (1) 33 U.S.C. 1251 et seq.; and
- (2) regulations adopted under 33 U.S.C. 1251 et seq.

**IC 13-11-2-35****"Commissioner"**

Sec. 35. (a) "Commissioner", except as provided in subsection (b), refers to the commissioner of the department of environmental management.

(b) "Commissioner", for purposes of IC 13-29-2-2 through IC 13-29-2-7, means a member of the Ohio River Valley Water Sanitation Commission.

**IC 13-11-2-90****"Governmental entity"**

Sec. 90. "Governmental entity", for purposes of IC 13-18-3 and IC 13-25-6, means the state or a political subdivision.

**IC 13-11-2-149.5****"Outstanding national resource water"**

Sec. 149.5. "Outstanding national resource water", for purposes of section 50.5 of this chapter and IC 13-18-3, means a water designated as such by the general assembly after recommendations by the water pollution control board and the environmental quality service council under IC 13-18-3-2(n) and IC 13-18-3-2(o). The designation must describe the quality of the outstanding national resource water to serve as the benchmark of the water quality that shall be maintained and protected. Waters that may be considered for designation as outstanding national resource waters include water bodies that are recognized as:

- (1) important because of protection through official action, such as:
  - (A) federal or state law;
  - (B) presidential or secretarial action;
  - (C) international treaty; or
  - (D) interstate compact;
- (2) having exceptional recreational significance;
- (3) having exceptional ecological significance;
- (4) having other special environmental, recreational, or ecological attributes; or
- (5) waters with respect to which designation as an outstanding national resource water is reasonably necessary for protection of other water bodies designated as outstanding national resource waters.

**IC 13-11-2-149.6****"Outstanding state resource water"**

Sec. 149.6. "Outstanding state resource water", for purposes of section 50.5 of this chapter and IC 13-18-3, means any water designated as such by the water pollution

control board regardless of when the designation occurred or occurs. Waters that may be considered for designation as outstanding state resource waters include water bodies that have unique or special ecological, recreational, or aesthetic significance.

#### **IC 13-11-2-157**

##### **"Permit"**

Sec. 157. (a) "Permit", for purposes of IC 13-15-4, means:

- (1) a permit;
- (2) a license;
- (3) a registration;
- (4) a certificate; or
- (5) other type of authorization required before construction or operation;

that may be issued by the commissioner under pollution control laws or environmental management laws.

(b) As used in IC 13-15-4-11 through IC 13-15-4-17, the term includes:

- (1) a permit; or
- (2) a determination related to a permit;

that is described in IC 13-15-4-1.

#### **IC 13-11-2-158**

##### **"Person"**

Sec. 158. (a) "Person", for purposes of:

- (1) IC 13-21;
- (2) air pollution control laws;
- (3) water pollution control laws; and
- (4) environmental management laws, except as provided in subsections (c), (d), (e), and (h);

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a municipal corporation, a city, a school city, a town, a school town, a school district, a school corporation, a county, any consolidated unit of government, political subdivision, state agency, a contractor, or any other legal entity.

(b) "Person", for purposes of:

- (1) IC 13-18-10;
- (2) IC 13-18-10.5;
- (3) IC 13-20-10.5; and
- (4) IC 13-20-17;

means an individual, a partnership, a copartnership, a firm, a company, a corporation, an association, a joint stock company, a trust, an estate, a political subdivision, a state agency, or other legal entity, or their legal representative, agent, or assigns.

(c) "Person", for purposes of:

- (1) IC 13-20-13;
- (2) IC 13-20-14;
- (3) IC 13-20-16; and

(4) IC 13-25-6;

means an individual, a corporation, a limited liability company, a partnership, or an unincorporated association.

(d) "Person", for purposes of IC 13-23, has the meaning set forth in subsection (a). The term includes a consortium, a joint venture, a commercial entity, and the United States government.

(e) "Person", for purposes of IC 13-20-17.5 and IC 13-25-3, means an individual, a corporation, a limited liability company, a partnership, a trust, an estate, or an unincorporated association.

(f) "Person", for purposes of IC 13-26, means an individual, a firm, a partnership, an association, a limited liability company, or a corporation other than an eligible entity.

(g) "Person", for purposes of IC 13-29-1, means any individual, corporation, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, business enterprise, or legal entity.

(h) "Person", for purposes of IC 13-30-8-1, has the meaning set forth in IC 35-41-1.

#### **IC 13-11-2-166**

##### **"Pollution prevention"**

Sec. 166. "Pollution prevention", for purposes of this title, means pollution prevention as defined by the United States Environmental Protection Agency under:

(1) the federal Pollution Prevention Act (42 U.S.C. 13101 et seq.); and

(2) the United States Environmental Protection Agency pollution prevention policy statement (June 15, 1993), as amended.

#### **IC 13-11-2-177.5**

##### **"Publicly owned treatment works"**

Sec. 177.5. "Publicly owned treatment works", for purposes of IC 13-18-3, has the meaning set forth in 327 IAC 5-1.5-48.